

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 347 Distilled Spirits  
**SPONSOR(S):** Renuart and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 642

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Livingston	Luczynski
2) Finance & Tax Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation is responsible for enforcing the provisions of the beverages laws.

The bill defines a "craft distillery" to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises. The bill creates a license that allows a craft distillery, as defined by the bill, to sell the distilled spirits it produces on its premises, to consumers, for both on and off premises consumption. The bill requires that sales of the spirits be made on "private property" contiguous to the distillery premises.

Once a craft distillery's production limitations have been surpassed (i.e., 75,000 gallons), the bill requires the craft distillery to notify the division within five days and immediately cease retail sales to consumers.

The bill has an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

There are some exceptions to this regulatory system. The exceptions include allowing a vendor license to be issued to a manufacturer of malt beverages for the sale of alcoholic beverages on property that includes a brewery and promotes tourism<sup>1</sup> and beer brew pubs to manufacture malt beverages and to sell them to consumers for consumption on the premises.<sup>2</sup> An exception is also allowed for in-state wineries to manufacture and sell directly to consumers.<sup>3</sup>

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill relate to ch. 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

"Manufacturer" is defined to mean all persons who make alcoholic beverages except those who make beer or wine for personal or family consumption.<sup>4</sup> "Distillery" or "distiller" is not specifically defined in statute or division rule.

##### Effect of proposed changes

The bill creates two definitions in s. 565.03, F.S.

- "Distillery" is defined to mean a manufacturer, rectifier, blender, or processor of distilled spirits; and
- "Craft Distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons of distilled spirits on its premises.

The bill creates a license that allows a craft distillery, as defined by the bill, to sell the distilled spirits it produces on its premises, to consumers, for both on and off premises consumption.

The bill requires that sales of the spirits be made on "private property" contiguous to the distillery premises, and included on the sketch submitted with the license application. The bill further requires that the division must approve any subsequent "revisions" to a craft distillery's sketch, verifying that the retail location operated by the distillery are owned or leased by the distillery and on property contiguous to the distillery's production building.

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<sup>1</sup> See s. 561.221(2), F.S.

<sup>2</sup> See s. 561.221(3), F.S., which permits the limited manufacture of beer by vendors known as brew pubs.

<sup>3</sup> See s. 561.221(1), F.S.

<sup>4</sup> See s. 561.01(7), F.S.

Once a craft distillery's production limitations have been surpassed (i.e., 75,000 gallons), the bill mandates that the craft distillery notify the division within five days and immediately cease retail sales to consumers.

The bill prohibits distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use. In addition, distilleries are prohibited from shipping their distilled spirits to consumers in state, although they are authorized to deliver them to manufacturers, distributors, bonded warehouses, and exporters.

The bill provides that the Beverage Law does not prohibit:

- A licensed distillery to own 100% of a vendor's license, if:
  - the vendor's premises meet the minimum qualifications for the vendor's license;
  - the vendor's premises are owned or leased by the distillery; and
  - the vendor's licensed premises are situated on property contiguous to the licensed premises where distilled spirits are produced;
- A licensed distillery to transport its distilled spirits in compliance with federal and state alcoholic beverage laws and administrative rules to any vendor's licensed premises on property contiguous to the distillery and owned or leased by the distillery;
- Any licensed distillery also licensed as a vendor and operating at a premise to purchase alcoholic beverage products produced at another licensed distillery in this state directly from the distillery;

The bill specifies that each distillery transporting its distilled spirits to its retail premises or making sales at its own retail location is responsible for submitting any beverages excise taxes under the Beverage Law in its monthly report to the division with any excise tax payments due to the state.

#### B. SECTION DIRECTORY:

Section 1 amends s. 565.03, F.S., to create a specialty license allowing craft distilleries (producing less than 75,000 gallons of distilled spirits) to sell their products to consumers in face-to-face transactions on retail premises contiguous to the distillery's premises.

Section 2 provides for an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The division estimates that assuming that the four craft distilleries currently in operation purchase a retail license for sales to individual consumers under the provisions of this bill, the State would receive \$7,280 in additional revenue annually.

Under the bill, all "distilleries" will be required to pay an annual \$4,000 license fee.

##### 2. Expenditures:

The division anticipates that any additional workload could be absorbed within existing resources.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The division notes that there would be a benefit to the distilleries being able to hold a vendor's license, allowing them to sell directly to the consumer, which would also provide another source of revenue.

D. FISCAL COMMENTS:

Distilleries must be licensed for direct to consumer sales with consumption allowed on the premises. Of the division's licenses, it is anticipated that the 4COP license would be necessary. The division estimates that the license fee would be \$1,820 per license.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes DBPR to adopt rules relating to the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR raises the following questions on the bill:<sup>5</sup>

1. At lines 24-26, the bill defines "craft distillery" to mean distilleries that produce 75,000 or fewer gallons of spirits, but it does not specify whether the production limit is on an annual or some other basis. The definition also appears to make all distilleries that produce 75,000 or fewer gallons of spirits, a "craft distillery," whether or not a distillery would want such designation. In section (2)(c)2., the bill states that any retail sales to consumers at the craft distillery's licensed premises are prohibited on the day after it reaches the production limitation, which is 75,000 gallons. It is unclear whether this is an annual limitation that prohibits further sales for the remainder of the year when the limit is met (i.e., the specialty license is suspended), or whether the specialty license allowing retail sales by the craft distillery is permanently revoked when the 75,000 gallon production amount is reached.

2. At line 44, the bill refers to "craft distilleries" and the remainder of the paragraph appears to apply to "craft distilleries." However, between lines 45 and 55, the bill the bill refers only to "distillery," leaving out the "craft" modifier. In line 57, the bill refers to both craft distilleries and "licensed distilleries." The inconsistent references make it unclear whether the provisions are intended to apply to distilleries, craft distilleries or both.

3. At lines 47-51, the bill provides that retail sales must be made on "private property" that is included on the sketch submitted with the license application. "Private property" is not defined. At lines 51-56, the bill suggests that when approving an amended or revised sketch (as opposed to the original

<sup>5</sup> See HB 347, 2013 Legislative Analysis Form, Office of Legislative Affairs, dated February 8, 2013, page 7.

sketch), the division must verify that retail sale locations are “owned and leased by the [licensee].” It is unclear whether or not the retail locations operated by a [craft] distillery must be owned or leased by the craft distiller at all times.

4. Note: In the section on craft distilleries, page 3, lines 62 and 63, the bill says, “1. This paragraph does not impact any ‘land use’ for a craft distillery ‘approved’ before July 1, 2013.” The effective date of the bill is July 1, 2013, so the term “approved” does not appear to mean “licensed”, so the term “approved” is unclear. Further, the term “land use” is confusing and undefined. The intent and impact of this section is unclear. It would appear that this may be a zoning issue rather than a division issue.

5. At lines 56-61, craft distilleries are prohibited from selling distilled spirits except in face-to-face sales transactions with consumers; however at lines 71-75 they are authorized to deliver them to manufacturers, distributors, etc. This appears to create a conflict: if a craft distillery must sell its products to consumers in a face-to-face transaction and may not ship to that consumer, under what circumstance would the craft distillery deliver its product to a manufacturer or other entity?

6. It is unclear, but it appears that lines 95-116 are intended to apply not to craft distilleries, but rather to other licensed distilleries (i.e., distilleries producing more than 75,000 gallons). Since the two are specifically broken out in the definitions, the use of just the word distillery in this area of the bill could be confusing as to whether all distilleries would have the opportunity to hold a vendor’s license, provided the vendor’s address was the same as that of the distillery’s with the location for the vendor’s premise being contiguous to that of the distillers, or whether the distillery must be a “craft” distillery and meet the production limitation. If it is intended that these provisions apply to craft distilleries in addition to or instead of to other licensed distilleries, the language should be clarified.

7. The provisions at lines 95-116 appear to conflict with current Beverage Law (ss. 561.22 and 561.42, F.S.). The bill states that “[t]he Beverage Law does not prohibit: . . .” although current law does prohibit the scheme contemplated by the bill. The “does not prohibit language” is not the typical language used for creating an exception.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**